

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF ALABAMA
OFFICE OF THE CLERK
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MONTGOMERY, ALABAMA 36101-0711

DEBRA P. HACKETT
CLERK

TELEPHONE

(334) 954-3610

September 25, 2007

Mr. Thomas K. Kahn, Clerk
United States Court of Appeals, Eleventh Circuit
56 Forsyth Street, NW
Atlanta, GA 30303

USDC No. CV-05-F-654-N

USCA No. _____

IN RE: USA VS. ALBERT CARTER, JR

Enclosed are documents regarding an appeal in this matter. Please acknowledge receipt on the enclosed copy of this letter.

☒ Certified copy of Notice of Appeal, docket entries. Judgment and Opinion/Order appealed from enclosed. If Opinion/Order was oral, please check box. []

☒ First Notice of Appeal: ☒ Yes, ___ No Date(s) of Other Notices: _____

Was there a hearing from which a transcript could be made:

☐ Yes, The Court Reporter(s) is/are:

☒ No Date of Hearing(s): _____

THE FOLLOWING MATERIALS WERE SEALED IN THIS COURT (Order encl.): _____

☒ IFP ☒; and/or APPEALABILITY/CPC is pending in this Court.

☐ Court Appointed Counsel/CJA; ___ Yes; ___ No; Copy of Order Enclosed:

☒ The Appellate docket fee has been paid ___ Yes, ☒ No: _____ Date , Receipt# _____

☐ Appellant has been ___ GRANTED; ___ DENIED IFP, Copy of Oder enclosed.

☐ Appellant has been ___ GRANTED; ___ DENIED CPC/APPEALABILITY, Copy of Order enclosed.

☐ Appeal Bond, ___ Supersedeas Bond

☒ The District Judge or Magistrate Judge appealed from is Hon: MARK E. FULLER

This is an appeal from a bankruptcy order; Bankruptcy Judge: _____

☐ This is a DEATH PENALTY appeal.

Certified record on appeal consisting of:

___ Volume(s) of Pleadings, ___ Volume(s) of Transcripts,
___ SEALED ITEMS, ie. ___ PSI(s)___; OTHER___; TAPE(s)___
___ Exhibits: ___ Envelope
___ Volume (s) of Original Papers

cc:

Sincerely,

DEBRA P. HACKETT, CLERK

By: Yolanda Williams
Deputy Clerk

APPEAL, CLOSED, INMATE, WILLOUGHBY

U.S. District Court
Alabama Middle District (Montgomery)
CIVIL DOCKET FOR CASE #: 2:05-cv-00654-MEF-CSC
Internal Use Only

United States of America v. Carter (INMATE3)

Assigned to: Hon. Chief Judge Mark E. Fuller

Referred to: Honorable Charles S. Coody

Case in other court: 07-14037-A

USDC Middle District Northern

Division, 2:03cr61-F

Cause: 28:2255 Motion to Vacate / Correct Illegal Sentenc

Date Filed: 07/15/2005

Date Terminated: 09/24/2007

Jury Demand: None

Nature of Suit: 510 Prisoner: Vacate

Sentence

Jurisdiction: U.S. Government

Defendant

Plaintiff

United States of America

represented by **James B. Perrine**

U.S. Attorney's Office

PO Box 197

Montgomery, AL 36101-0197

334-223-7280

Fax: 223-7560

Email: jb.perrine@usdoj.gov

LEAD ATTORNEY

ATTORNEY TO BE NOTICED

Kent B. Brunson

U.S. Attorney's Office

PO Box 197

Montgomery, AL 36101-0197

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Fax: 223-7560

Email: Kent.Brunson@usdoj.gov

LEAD ATTORNEY

ATTORNEY TO BE NOTICED

V.

Defendant

Albert Carter, Jr.

represented by **Albert Carter, Jr.**

AIS #107266

St. Clair Correctional Facility

1000 St. Clair Road

Springville, AL 35146

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Date Filed	#	Docket Text
07/15/2005		(Court only) ***Staff Attorneys added as Interested Party. Assignment of Staff Attorney Willoughby, ***Set Inmate and Staff Attorney Flags (cs) (Entered: 07/18/2005)
07/15/2005	<u>1</u>	MOTION to Vacate, Set Aside or Correct Sentence (2255) , filed by Albert Carter, Jr.(sl,) Additional attachment(s) added on 1/11/2006 (sl,). (Entered: 07/20/2005)
07/15/2005	<u>2</u>	Application to Proceed Without Prepayment of Fees and Affidavit by Albert Carter, Jr. (sl,) (Entered: 07/20/2005)
07/25/2005	<u>3</u>	ORDERED that the application to proceed without prepayment of fees is denied as moot. Signed by Judge Charles S. Coody on 7/26/05. (sl,) (Entered: 07/25/2005)
07/25/2005	<u>4</u>	ORDER directing the United States Attorney to file a resposne to Carter's <u>1</u> Motion to Vacate/Set Aside/Correct Sentence (2255) within thirty (30) days from the date of this order as further set out in order. The Clerk is directed to provide a copy of the instant 2255 motion to attorney Joseph P. Van Heest. Ordered that withint twenty (20) days from the date of this order, Mr. Van Heest shall file with this court an affidavit that addresses the claims of ineffective assistance of counsel presented against him the 2255 motion. Signed by Judge Charles S. Coody on 7/25/05. (sl,) (Entered: 07/25/2005)
07/25/2005		(Court only) ***Party Joseph P. Van Heest added as Interested Party. (sl,) (Entered: 08/11/2005)
07/27/2005	<u>5</u>	Return Receipt Card showing service of 2255 Motion and Order signed by Nancy Yarn for U. S. Attorney on 7/26/05; answer due 8/26/05 (sl,) (Entered: 07/29/2005)
08/10/2005	<u>6</u>	AFFIDAVIT of Joseph P. Van Heest pursuant to <u>4</u> Order. (sl,) (Entered: 08/11/2005)
08/24/2005	<u>7</u>	REPLY BRIEF re <u>1</u> Motion to Vacate/Set Aside/Correct Sentence (2255) filed by United States of America. (Attachments: # <u>1</u> Exhibit Indictment# <u>2</u> Exhibit PleaAgmt# <u>3</u> Exhibit PleaTranscript# <u>4</u> Exhibit SentencingTranscript# <u>5</u> Exhibit AppDecision# <u>6</u> Exhibit AttyAffidavit# <u>7</u> Exhibit Arr.Transcript)(Perrine, James) (Entered: 08/24/2005)
08/24/2005		***Attorney James B. Perrine for United States of America added. (sl,) (Entered: 08/25/2005)
08/25/2005	<u>8</u>	ORDERED that on or before 9/13/05, Carter may file a reply to the <u>7</u> Response filed by the government as further set out in order. Signed by Judge Charles S. Coody on 8/25/05. (sl,) (Entered: 08/25/2005)
09/01/2005	<u>9</u>	Response to <u>8</u> Order by Albert Carter, Jr. (sl,) (Entered: 09/02/2005)

09/12/2005	<u>10</u>	REPLY to <u>7</u> Response by Albert Carter, Jr. (pursuant to <u>8</u> Order). (Attachments: # <u>1</u> Exhibit 1-Warrant for Arrest)(sl,) (Entered: 09/13/2005)
07/18/2006	<u>11</u>	MOTION for Recusal by Albert Carter, Jr. (sl,) (Entered: 07/18/2006)
07/19/2006	<u>12</u>	ORDER denying <u>11</u> Motion for Recusal . Signed by Judge Charles S. Coody on 7/19/06. (sl,) (Entered: 07/19/2006)
07/16/2007	<u>13</u>	MOTION for Recusal by Albert Carter, Jr. (wcl,) (Entered: 07/16/2007)
08/06/2007	<u>14</u>	REPORT AND RECOMMENDATIONS of the Magistrate Judge that the 28 USC 2255 motion filed by Carter be denied, as the claims therein entitle him to no relief; Objections to R&R due by 8/20/2007. Signed by Judge Charles S. Coody on 8/6/2007. (wcl,) (Entered: 08/06/2007)
08/15/2007	<u>15</u>	MOTION for Extension of Time, MOTION for Discovery by Albert Carter, Jr. (wcl,) (Entered: 08/15/2007)
08/16/2007	<u>16</u>	ORDERED that: 1) The <u>15</u> MOTION for Extension of Time be and is hereby GRANTED; 2) Carter be and is hereby GRANTED an extension from 8/20/2007, to and including 9/4/2007, to file his objections to the Recommendation entered on 8/6/2007; Objections to R&R due by 9/4/2007; 3) Carter's <u>15</u> MOTION for Discovery be and is hereby DENIED. Signed by Judge Charles S. Coody on 8/16/2007. (wcl,) (Entered: 08/16/2007)
08/17/2007	<u>17</u>	ORDER denying <u>13</u> Motion for Recusal. Signed by Judge Mark E. Fuller on 8/17/2007. (wcl,) (Entered: 08/17/2007)
08/29/2007	<u>18</u>	NOTICE OF INTERLOCUTORY APPEAL by Albert Carter, Jr to the United States Court of Appeals for the Eleventh Circuit from the <u>17</u> Order on Motion for Recusal entered on 08/17/2007. Copies mailed (ydw,) (Entered: 08/29/2007)
08/29/2007	<u>19</u>	Transmission of Notice of Appeal and Certified copy of Docket Sheet and Order to US Court of Appeals re <u>18</u> Notice of Interlocutory Appeal (ydw,) Additional attachment(s) added on 8/29/2007 (ydw,). (Entered: 08/29/2007)
09/04/2007		No objections filed to recommendation. (NO PDF ATTACHED) (wcl,) (Entered: 09/04/2007)
09/04/2007	<u>20</u>	USCA Case Number 07-14037-A for <u>18</u> Notice of Interlocutory Appeal filed by Albert Carter, Jr. (dmn) (Entered: 09/10/2007)
09/12/2007	<u>21</u>	(VACATED PURSUANT TO <u>23</u> ORDER) ORDERED that the <u>14</u> Report and Recommendation be and is hereby ADOPTED and the <u>1</u> Motion to Vacate, Set Aside or Correct Sentence (2255) be and is hereby DENIED. Signed by Judge Mark E. Fuller on 9/12/2007. (Attachments: # <u>1</u> civil appeals checklist)(wcl,) Modified on 9/24/2007 (wcl,). (Entered: 09/12/2007)

09/17/2007	● <u>22</u>	OBJECTION to <u>14</u> Report and Recommendations of the Magistrate Judge by Albert Carter, Jr. (wcl,) (Entered: 09/17/2007)
09/24/2007	● <u>23</u>	ORDER directing that this Court's <u>21</u> Order dated 9/12/2007 adopting the Report and Recommendation of the Magistrate Judge is VACATED. Signed by Judge Mark E. Fuller on 9/24/2007. (wcl,) (Entered: 09/24/2007)
09/24/2007	●	(Court only) ***Reopen Document <u>14</u> REPORT AND RECOMMENDATIONS re <u>1</u> Motion to Vacate/Set Aside/Correct Sentence (2255) filed by Albert Carter, Jr pursuant to <u>23</u> Order. (NO PDF ATTACHED) (wcl,) (Entered: 09/24/2007)
09/24/2007	● <u>24</u>	ORDER, JUDGMENT and DECREE of the Court that: 1) The dft's untimely filed <u>22</u> Objection to the Recommendation of the Magistrate Judge filed on 9/17/2007 is OVERRULED; 2) The <u>14</u> Report and Recommendation of the Magistrate Judge filed on 8/6/2007 is ADOPTED; 3) The <u>1</u> Motion to Vacate pursuant to 28 USC 2255 is DENIED. Signed by Judge Mark E. Fuller on 9/24/2007. (Attachments: # <u>1</u> civil appeals checklist)(wcl,) (Entered: 09/24/2007)
09/24/2007	● <u>25</u>	NOTICE OF APPEAL construed as containing M/IFP and M/COA by Albert Carter, Jr, from the <u>21</u> Order denying Motion to Vacate/Set Aside/Correct Sentence (2255), entered on 9/12/07. Copies mailed(ydw,) (Entered: 09/25/2007)
09/24/2007	●	Notice of Appeal <u>25</u> construed as containing MOTION for Leave to Appeal in forma pauperis, MOTION for Certificate of Appealability by Albert Carter, Jr. (ydw,) (Entered: 09/25/2007)
09/25/2007	●	Transmission of Notice of Appeal and Certified Copy of Docket Sheet and Order to US Court of Appeals re <u>25</u> Notice of Appeal (ydw,) (Entered: 09/25/2007)